

APPEAL NO. 033232-s
FILED JANUARY 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 25, 2003. The hearing officer resolved the disputed issue by deciding that death benefits are payable to the appellant (claimant) for 364 weeks as an eligible dependent stepchild of the decedent. The claimant appeals, contending that the hearing officer erred in limiting the duration of his death benefits to 364 weeks under Section 408.183(e) rather than awarding the duration periods specified in Sections 408.183(c) and (d). The respondent (carrier) asserts that the hearing officer's decision is correct and requests affirmance.

DECISION

Affirmed.

In Texas Workers' Compensation Commission Appeal No. 981280, decided July 29, 1998, the Appeals Panel reversed and remanded a prior CCH decision that determined that the claimant's mother and the claimant are the proper legal beneficiaries of the decedent. The CCH decision on remand, which was issued on September 4, 1998, determined that the claimant's mother and the claimant are the proper legal beneficiaries of the decedent because, at the time of the decedent's death, the claimant's mother was the decedent's common-law wife and the claimant was a dependent of the decedent. The CCH decision on remand was not appealed to the Appeals Panel.

The disputed issue before the hearing officer in the present case was for what duration should benefits be payable to the claimant as an eligible dependent stepchild of the decedent? The parties stipulated that the decedent died on _____, as a result of a compensable injury; that at the time of the decedent's death, the decedent was married, through a common-law marriage, to the claimant's mother; that the claimant is the son of the claimant's mother from a prior marriage; that the claimant was born on (date of birth); that the claimant was not adopted by the decedent; and that the claimant was the decedent's dependent at the time of the decedent's death. It is undisputed that at the time of the decedent's death, the claimant was the dependent stepson of the decedent. It is also undisputed that the claimant does not have a mental or physical disability.

Section 401.011(7) defines "child" as "a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee."

Section 408.182 is entitled "Distribution of Death Benefits," and subsection (f) provides as follows:

(f) In this section:

(1) "Eligible child" means a child of a deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or

(C) a dependent of the deceased employee at the time of the employee's death.

Section 408.183 is entitled "Duration of Death Benefits," and subsections (c), (d), and (e) provide as follows:

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive benefits until the child attains the age of 18.

(d) A child eligible for death benefits under Subsection (c) who at age 18 is enrolled as a full-time student in an accredited educational institution or a child who is eligible for death benefits because on the date of the employee's death the child is enrolled as a full-time student in an accredited educational institution is entitled to receive or to continue to receive, as appropriate, benefits until the earliest of:

(1) the date the child ceases, for a second consecutive semester, to be enrolled as a full-time student in an accredited educational institution;

(2) the date the child attains the age of 25; or

(3) the date the child dies.

(e) A child who is eligible for death benefits because the child is a dependent of the deceased employee on the date of the employee's death is entitled to receive benefits until the earlier of:

(1) the date the child dies; or

(2) if the child is dependent:

(A) because the child is an individual with a physical or mental disability, the date the child no longer has the disability; or

(B) because of a reason other than a physical or mental disability, the date of the expiration of 364 weeks of death benefit payments.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.4 (Rule 132.4), effective January 1, 1991, is entitled "Eligibility of a Child to Receive Death Benefits," and subsection (d) provides as follows:

(d) A person claiming benefits as the dependent stepchild of the deceased employee shall prove that the employee was married to a parent of the claimant, and must also establish dependent status as set out in § 132.2 of this title (relating to Determination of Facts of Dependent Status).

Rule 132.8, effective January 1, 1991, is entitled "Duration of Death Benefits for an Eligible Child." The preamble to Rule 132.8 at 15 Tex. Reg. 7023 (1990) states:

New § 132.8 explains how long a child who receives death benefits will be paid, based upon the child's reason for being eligible for benefits.

Rule 132.8(a) pertains to a child who is eligible to receive death benefits because the child is a minor on the date of the employee's death. Rule 132.8(b) pertains to a child who is eligible to receive death benefits as a full-time student at an accredited educational institution on the date of the employee's death or on the child's 18th birthday. Rule 132.8(d) pertains to a child who is eligible to receive death benefits because the child had a mental or physical handicap and was dependent on the employee because of the handicap on the date of the employee's death. Rule 132.8(f) provides as follows:

(f) A child, who is otherwise eligible to receive benefits because the child was dependent on the employee on the date of the employee's death, is entitled to receive benefits until the earlier of:

(1) the date on which the child dies; or

(2) the expiration of 364 weeks of death benefit payments.

In Texas Workers' Compensation Commission Appeal No. 941246, decided November 2, 1994, the Appeals Panel affirmed a hearing officer's decision that a deceased employee's stepchildren were not the decedent's legal beneficiaries under the 1989 Act because the stepchildren had failed to prove their dependency status, which was "the threshold requirement for establishing entitlement to death benefits." In Texas Workers' Compensation Commission Appeal No. 002112, decided October 19, 2000, the Appeals Panel stated "a nonbiological or non-adoptive child of an injured worker may only recover benefits if that person is a dependent stepchild of the deceased."

In the instant case, the hearing officer stated in the Discussion section of his decision that:

Under the Act, § 401.011(7), “child” includes a stepchild who is a dependent of the employee. Under the stipulated facts, [claimant] is such a stepchild. An eligible child, pursuant to Act § 408.182(f), can fit into one of three categories: a minor, an under-25 student, or a dependent at the time of death. The next section, § 408.183, determines the duration of death benefits. Such duration depends on the category of the child--- minor, student or dependent.

In this case, [claimant] was a stepchild of the deceased, and he was a minor, but he did not get his eligibility for benefits from his minority, but rather from his status as a dependent. As a dependent, his eligibility for death benefits extended, pursuant to § 408.183(e)(2)(B), until the date of expiration of 364 weeks of death benefit payments.

The claimant asserts that because Section 401.011(7) includes in the definition of “child” a stepchild who is dependent on the employee, he, as a dependent stepchild, is a “child” for all purposes of the 1989 Act and, therefore, is an eligible child under Section 408.182(f) as both a minor and a dependent and his death benefits should have been awarded until his 18th birthday or as long as he is a full-time student and has not turned 25 pursuant to Sections 408.183(c) and (d). We disagree with the claimant’s contention because his eligibility for death benefits is not because he was a minor on the date of the decedent’s death, which he was; rather his eligibility for death benefits is because he was a dependent of the decedent on the date the decedent died. We do not read Section 401.011(7), which defines “child,” as abrogating the specific provision contained in Section 408.183(e), which pertains to “a child who is eligible for death benefits because the child is a dependent of the deceased employee on the date of the employee’s death....” As previously noted, the preamble to Rule 132.8 (relating to the Duration of Death Benefits for an Eligible Child), states that Rule 132.8 explains how long a child who receives death benefits will be paid, based upon the child’s reason for being eligible. Since the reason the claimant was eligible for death benefits was because he was a dependent stepchild of the decedent on the date of the decedent’s death, Section 408.183(e) and Rule 132.8(f) apply and, therefore, we perceive no error in the hearing officer’s decision that death benefits are payable to the claimant for 364 weeks as an eligible dependent stepchild of the deceased.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Reliance National Indemnity Company**, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge